IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIRST DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 16583 of 2004

AND

C.C.NO.91 of 2005

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WRIT PETITION NO : 16583 of 2004

Between:

P.S.Murthy, s/o Subba Rao, Deputy Central Intelligence Officer (DCIO), SIB (MHA), Government of India, 4-5-368-373, Beside Kendriya Sadan, Sultan Bazar, Hyderabad-500 195

..... PETITIONER

AND

1 The Director of Intelligence Bureau, Ministry of Home Affairs, Government of India, Central Secretariat, North Block, New Delhi.
2 The Joint Director, Establishment, Intelligence Bureau, Ministry of Home Affairs, Government of India, Central Secretariat, South Block, New Delhi.
3 R.K.Teji, Assistant Director (Retired), C/O SIB, Jaipur.
4 P.Ramamohanrao, Assistant Director (Retired), C/O SIB, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ order or direction more particularly one in the nature of writ of certiorari and quash the order in O.A.No.1232/2002 dt.27-2-2003 and also the order Review Application No.41/2003 dt.8-7-2004 on the file of the Central Administrative

Tribunal, Hyderabad and direct the respondents No.1 and 2 to implement the recommendation of the D.P.C. held on 30-7-2001 and by promoting me as Assistant Director (Executive).

Counsel for the Petitioner: MR. P.S.MURTHY, PARTY-IN-PERSON

Counsel for the Respondent Nos.1 and 2: MR.A.RAJASHEKAR REDDY, STANDING COUNSEL FOR CENTRAL GOVERNMENT.

Counsel for Respondents 3 and 4: None appeared.

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CONTEMPT CASE NO : 91 of 2005

(Contempt Case U/s. 10 to 12 of Contempt of Courts Act to punish the Respondents herein for violating, disobeying the Order of the High Court dated 16.11.2004 in WPMP No.21648 of 2004 in WP No. 16583 of 2004.

Between:

P.S. MURTHY S/o Subba Rao, Deputy Central Intelligence Officer (DCIO), SIB(MHA) Government of India, Hyderabad.
R/o Plot No.80, Raghav Kalyan Estate, J.J. Nagar PO., Secunderabad.

..... PETITIONER

AND

1 Sri E.S.L. Narasimhan, Director,
Intelligence Bureau, Ministry of Home Affairs,
Government of India, Central Secretariat, North Block, New Delhi.
2 Sri R.N. Gupta, Joint Director (Establishment),
Intelligence Bureau, Ministry of Home Affairs,
Government of India, Central Secretariat, North Block, New Delhi.

.....RESPONDENTS

Counsel for the Petitioner: MR. P.S.MURTHY, PARTY-IN-PERSON

Counsel for the Respondent No.: MR.A.RAJASHEKAR REDDY, STANDING COUNSEL FOR CENTRAL GOVERNMENT.

The Court made the following:

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ORAL ORDER: (per GB.J.)

The Writ Petition is filed assailing the order passed by the Central Administrative Tribunal (for short Tribunal) in O.A.No.1232 of 2002, dated 27.2.2003.

2. The petitioner was working as Deputy Central Intelligence Officer (DCIO) in the Ministry of Home Affairs, Intelligence Bureau. He is seeking promotion to the post of Assistant Director. The criteria for promotion is based on merit-cum-seniority. However, in July, 1999 the petitioner was sent on deputation to Bosnia and he came back to India in June, 2000. During the interregnum it appears that complaints were made against the petitioner by the in-charge DCIO about the alleged illegal withdrawal of HRA and other benefits, but no charge sheet was issued to him. The correspondence was going on in between the Vigilance Commission and the Department. In the meanwhile, the DPC took place on 30.7.2001 for consideration of the eligible candidates for promotion to the post of Assistant Director. The petitioner and the other Officers were considered and they were cleared by the DPC for promotion to the post of Assistant Directors and on the next day i.e., 31.7.2001, only two Officers were promoted and the petitioner was not promoted. Aggrieved by the action of the Department in not promoting him, the petitioner filed the above OA before the Tribunal. The Tribunal, after taking into consideration the procedure laid down in OM.No.22011/4/91-Estt.(A), dated 14.9.1992 dismissed the OA. Against the said order, the present Writ Petition has been filed.

3. It is now brought to the notice of this Court that the petitioner has since

retired from service with effect from 28.2.2005. The Tribunal while dismissing the OA observed that when the petitioner was issued with a charge sheet, the sealed cover procedure has to be adopted by the DPC and admittedly the petitioner was issued with the charge sheet on 31.7.2001. Hence denying promotion cannot be said to be illegal and contrary to law.

4. The petitioner-party-in-person submits that Para-7 of the OM dated 14.9.1992 has not been properly construed by the authorities, which resulted in miscarriage of justice. He would also submit that the DPC which met on 30.7.2001 cleared the case of the petitioner along with two other persons, of which date no charge sheet was issued to him and therefore the question of DPC placing the case of the petitioner in sealed cover would not arise. In fact it is not the case of the Department that the DPC itself had put the case of the petitioner in sealed cover, but subsequent events which were taken note of by the Department to the effect that before he was actually promoted to the post of Assistant Director, the charge sheet was issued by the competent authority on 31.7.2001 and therefore since it is covered by para 7 of OM dated 14.9.1992, the promotion was denied to him.

5. Per contra, the learned Standing Counsel for Central Government submits that para-7 of the Office Memo dated 14.9.1992 covers the situation in its entirety and the petitioner cannot claim the promotion being in the cloud of charge sheet dated 31.7.2001.

6. The issue that arises for consideration is as to whether the petitioner can be excluded from promotion while his colleagues were cleared by the DPC on 30.7.2001.

7. It is not in dispute that the DPC took place on 30.7.2001, in which the cases of the three Officers were cleared including the petitioner, but it appears that on 31.7.2001 a charge sheet was issued to the petitioner and the said charge sheet was sent by the Department from Delhi Office and the same was appears to have been served on the petitioner on 3.8.2001. But it is to be seen what is the effect of issuing charge sheet to the petitioner after the DPC cleared the case of the petitioner in this case.

8. The party-in-person submits that para-7 of the Office Memo dated 14.9.1992 only states that a Government servant, who is recommended for promotion by

the DPC but in whose case any of the circumstances mentioned in para-2 arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He submits that in this case the charge sheet was issued to him on 31.7.2001 and it was received by him on 3.8.2001, which relate to much earlier period, which cannot be said to arise after the DPC has cleared his case and therefore he cannot be denied promotion under Para-7 of the Office Memo. The Office Memo dated 14.9.1992 has clearly stated under what circumstances the DPC can withhold the promotion by keeping the promotion of the eligible candidates in a sealed cover. Under Para-2 the sealed cover procedure can be adopted by the DPC in the following three events, viz., (i) when the government servant under suspension; (ii) when a charge sheet has been issued and the disciplinary proceedings are pending, and (iii) when he is involved in a criminal charge. Though, in the instant case, these things are not before the DPC when the case of the petitioner was considered on 30.7.2001, his promotion was denied on the ground that the charge sheet which came to be issued on 31.7.2001 was served on 3.8.2001. Therefore this is a later event which could cover the situation. For better appreciation of the case, it is relevant to extract Para-7 of the Office Memo dated 14.9.1992, which reads as hereunder:

> "A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para.2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this OM will be applicable in his case also".

9. The above office memo is very clear in its amplitude, which clearly says that the circumstances mentioned in Para-2 should arise after the recommendations of the DPC are submitted. Therefore, whatever events occurred, which will cause obstacles to the promotion of the petitioner, should only emanate after the DPC has recommended. But admittedly in the case on hand no fresh event had taken place after 30.7.2001 and what was mentioned in the charge sheet relates to the events which took place much earlier, which cannot be taken note of denying the promotion of the petitioner. Under these circumstances, we are

in agreement with the contention raised by the party-in-person to the effect that the events those were taken place after the DPC had recommended his case for promotion to be considered. Therefore, applying the said principle, the charge sheet, which was issued on 31.7.2001, cannot said to be cover the events which were held subsequent to the clearance by the DPC. Under those circumstances, we find that the order of the Tribunal is not sustainable. In fact the Tribunal did not concentrate on Para-3 of the office memo and it is only swayed away by Para-2 of the Office Memo, which is a general provision for adopting the sealed cover procedure. Thus, we find that the order of the Tribunal is not sustainable and the petitioner is entitled for promotion as Assistant Director along with other Officers with effect from 31.7.2001 with all consequential benefits. This exercise shall be completed within a period of six (06) weeks from the date of receipt of a copy of this order.

10. It is now stated by the learned Standing Counsel that the enquiry was conducted and he was imposed with the punishment. It is for the authorities to implement the punishment in the promotion post subject to the right of challenge of the petitioner.

11. In the result, the Writ Petition is allowed. No costs.

Contempt Case No.91/2005

12. In view of the orders passed in Writ Petition No.16583 of 2004, no orders are necessary in the Contempt Case. Accordingly the Contempt Case is closed.

(G.BIKSHAPATHY, J.)

21st March, 2005.

(P.S.NARAYANA, J.)

SSR

Rule nisi is made absolute as above. Witness Sri Devinder Gupta, Hon'ble the Chief Justice, on this Monday, the 21st day of March, 2005.

To

1 The Director of Intelligence Bureau, Ministry of Home Affairs, Government of India, Central Secretariat, North Block, New Delhi.
2 The Joint Director, Establishment, Intelligence Bureau, Ministry of Home Affairs, Government of India, Central Secretariat, South Block, New Delhi.
3 The Registrar, Central Administrative Tribunal, Hyderabad Bench, Hyderabad.

4 2 CD copies

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